

37 Am. Jur. 2d Fraud and Deceit § 33

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

II. Elements and Requisites

B. Particular Elements or Considerations

1. In General

§ 33. Necessity that defrauder benefit from or have interest in transaction; effect of benefit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

A.L.R. Library

[Misrepresentations as to financial condition or credit of third person as actionable by one extending credit in reliance thereon, 32 A.L.R.2d 184](#)

It is well settled that in order to render one liable for damages in an action for deceit, it is not necessary that he or she derive any benefit from the deception¹ or have colluded with the person who was so benefited.² A plaintiff need not prove that the defendant derived a benefit in order to maintain a fraud claim.³ Thus, where a third person fraudulently induces one to enter into a transaction, the third person may be liable for the fraud even though he or she receives no benefit therefrom.⁴ Conversely, it is not necessarily a proof of fraud that the defendant acted in self-interest or received a benefit from his or her actions.⁵

Observation:

Although not a necessary element of the cause of action for fraud, benefit to the defrauding party may constitute circumstantial evidence of an intent to defraud where intent is an element of the cause of action for fraud.⁶ Nevertheless, a motive for indirect gain does not infect an otherwise honest transaction with fraud.⁷

Moreover, it is not necessary, in order to establish remediable damage, that the person charged with fraud will have had any interest in the contemplated transaction or in the subject matter thereof.⁸ There is also authority holding that a party who knowingly receives and retains a benefit from a transaction that is tainted with fraud cannot later claim that benefit and disavow knowledge of the fraud; conversely, a party who receives no benefit from the transaction cannot be charged with knowledge of the fraud.⁹

Likewise, implicit in the constructive fraud requirement that a defendant take advantage of his or her position of trust to the plaintiff's detriment is the notion that the defendant must seek his or her own advantage in the transaction; that is, the defendant must seek to benefit himself or herself.¹⁰ Indeed, the primary difference between pleading a claim for constructive fraud and one for breach of fiduciary duty is the constructive fraud requirement that the defendant benefit himself or herself.¹¹ A fiduciary, who benefits in a transaction with the person for whom he or she is a fiduciary bears the burden of establishing that the transaction did not violate his or her obligations.¹²

With regard to an action in assumpsit or for money had and received, on the ground of fraud, it has been held essential to show that the defendant benefited from the fraud, in order to maintain the action.¹³

Observation:

A claim of innocent misrepresentation represents a species of fraudulent misrepresentation but has, as its distinguishing characteristics, the elimination of the need to prove a fraudulent purpose or an intent on the part of the defendant that the misrepresentation be acted upon by the plaintiff and has, as added elements, the necessity to show that an unintentional false representation was made in connection with the making of a contract and that the injury suffered as a consequence of the misrepresentation inured to the benefit of the party making the misrepresentation.¹⁴ A claim of innocent misrepresentation is shown where a party detrimentally relies on a false representation in such a manner that the injury inures to the benefit of the party making the misrepresentation.¹⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ James-Dickinson Farm Mortgage Co. v. Harry, 273 U.S. 119, 47 S. Ct. 308, 71 L. Ed. 569 (1927); Hyma v. Lee, 338 Mich. 31, 60 N.W.2d 920 (1953).
- ² Sowers v. Robertson, 144 Kan. 273, 58 P.2d 1105 (1936); Kuelling v. Roderick Lean Mfg. Co., 183 N.Y. 78, 75 N.E. 1098 (1905).
- ³ Matis v. Golden, 228 S.W.3d 301 (Tex. App. Waco 2007).
- ⁴ § 295.
- ⁵ James v. Anderson, 149 Va. 113, 140 S.E. 264, 56 A.L.R. 421 (1927).
- ⁶ Cofacredit, S.A. v. Windsor Plumbing Supply Co., Inc., 187 F.3d 229 (2d Cir. 1999).
As to the elements of an action for fraud, see § 24.
- ⁷ New Blue Point Mining Co. v. Weissbein, 198 Cal. 261, 244 P. 325, 45 A.L.R. 781 (1926); Montgomery v. Phillips Petroleum Co., 49 S.W.2d 967 (Tex. Civ. App. Amarillo 1932), writ refused, (July 19, 1932).
- ⁸ Beatrice Creamery Co. v. Goldman, 1935 OK 1192, 175 Okla. 300, 52 P.2d 1033 (1935).

- ⁹ McRaith v. BDO Seidman, LLP, 391 Ill. App. 3d 565, 330 Ill. Dec. 597, 909 N.E.2d 310 (1st Dist. 2009).
- ¹⁰ Geo. Knight & Co., Inc. v. Watson Wyatt & Co., 170 F.3d 210 (1st Cir. 1999); Ridenhour v. International Business Machines Corp., 132 N.C. App. 563, 512 S.E.2d 774 (1999).
As to the elements of constructive fraud and fiduciary and confidential relationships, see §§ 9, 25, 34 to 36.
- ¹¹ Orr v. Calvert, 713 S.E.2d 39 (N.C. Ct. App. 2011), decision rev'd on other grounds, 365 N.C. 320, 720 S.E.2d 387 (2011).
- ¹² Cleary v. Cleary, 427 Mass. 286, 692 N.E.2d 955 (1998).
- ¹³ § 363.
- ¹⁴ M&D, Inc. v. W.B. McConkey, 231 Mich. App. 22, 585 N.W.2d 33 (1998).
As to innocent misrepresentation, generally, see § 121.
- ¹⁵ Roberts v. Saffell, 280 Mich. App. 397, 760 N.W.2d 715 (2008), judgment aff'd, 483 Mich. 1089, 766 N.W.2d 288 (2009).